

Section 3 - Tribal Compliance Report

PART I - INTRODUCTION

PURPOSE

The purpose of this section of the 1996 National Annual Public Water Systems Compliance Report¹ is to provide information on the compliance status of public water systems (PWSs) on Indian reservations.

WORKGROUP AND STAKEHOLDER PROCESS

In order to develop this section of the report, the U.S. Environmental Protection Agency (EPA) established a workgroup consisting primarily of EPA Regional Office staff who work most directly with PWSs on Indian reservations and shared the report with Tribal representatives and water system operators. EPA also contacted the Indian Health Service and Bureau of Indian Affairs.

EPA held a series of teleconference calls with stakeholders and one face-to-face meeting to collect comments from stakeholders. Stakeholders included representatives of Indian Tribes, professional environmental organizations, and members of the Native American Water Association. Tribal water systems operators, as well as officials of Tribal governments, were represented. EPA solicited comments on drafts of this section of the report from approximately 400 Tribal representatives that included Tribal Leaders, Tribal Environmental Officers, and Tribal water utility managers and operators.

ROLE OF OTHER FEDERAL AGENCIES

EPA works with other Federal agencies in helping implement the drinking water program

at PWSs on Tribal lands. The mission of the Indian Health Service is to provide a comprehensive health services delivery system for American Indians and Alaska Natives along with the opportunity for maximum Tribal involvement in developing and managing programs to meet health needs. The Indian Health Service maintains a sanitation facilities construction program and has implemented Sanitation Deficiency System procedures to identify, and report annually to Congress, the sanitation deficiencies of all American Indian and Alaska Native Homes and communities.

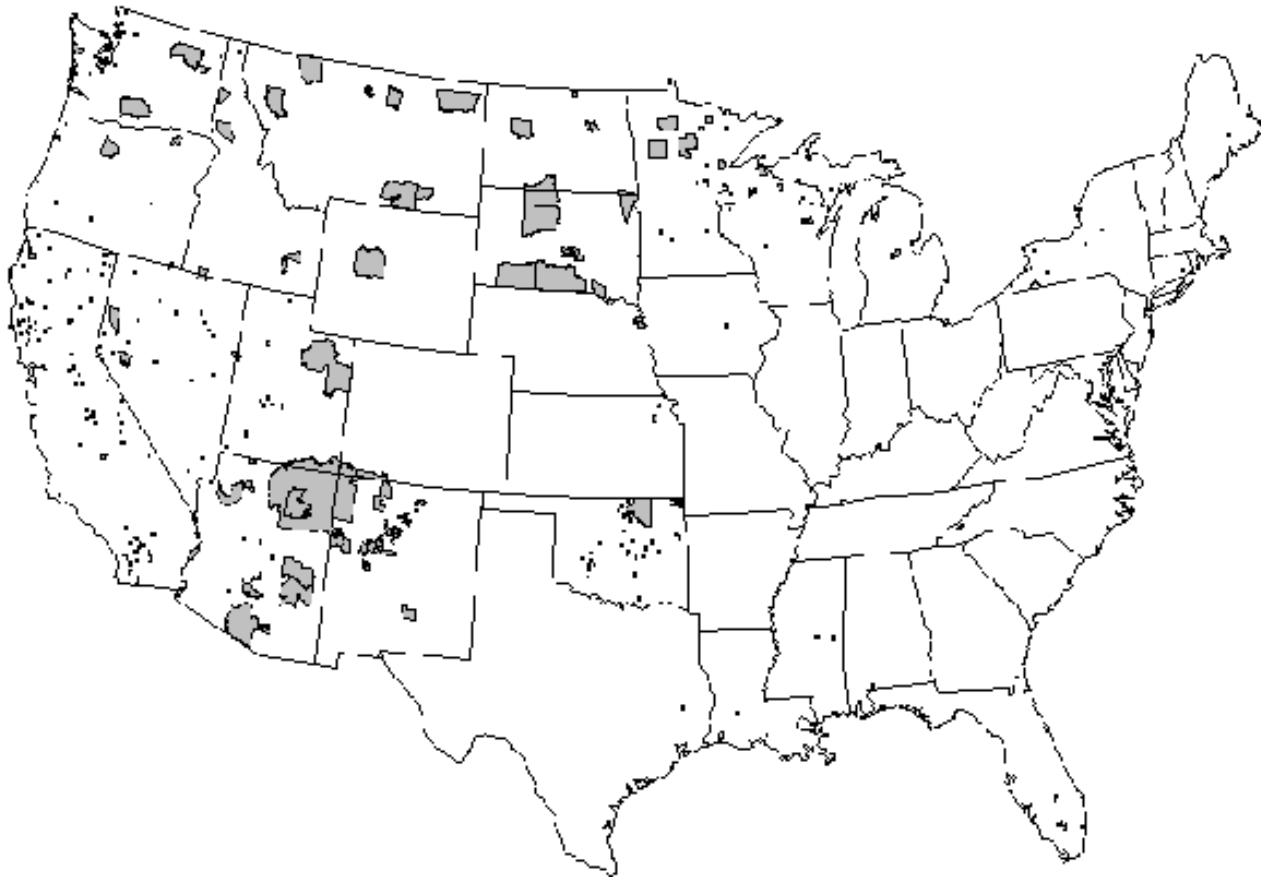
The Bureau of Indian Affairs is the primary Federal agency fulfilling the United States' trust responsibilities to Tribes and Native Villages. The Bureau of Indian Affairs works with Tribal managers in protecting and managing trust resources. As the Bureau of Indian Affairs expands its expertise in environmental management, it will work with Tribes, Native Villages, and other Federal agencies, such as EPA and the Indian Health Service, to ensure that PWSs in Indian country are in compliance.

PART II - PWSS ON INDIAN RESERVATIONS

Tribes are eligible to receive primary enforcement responsibility (primacy) to administer their drinking water program. However, because no Tribe has received primacy to date, EPA implements the drinking water program on all Indian lands (Figure 7).

During calendar year 1996, there were 732 community water systems, 75 non-transient non-community water systems, and 113 tran-

¹Under Section 1414(c)(3)(B) of the Safe Drinking Water Act (SDWA), as amended in 1996, EPA is required to prepare an annual report which analyzes PWS violations, enforcement activities, and financial assistance to PWSs located on Indian reservations. The report must also summarize notices submitted by PWSs serving Indian Tribes pursuant to subparagraph (C) or (D) of paragraph (2) and make recommendations concerning resources needed to improve compliance. However, because regulations implementing the public notice provisions of subparagraph (C) or (D) of paragraph (2) were not yet effective during calendar year 1996, they are not included in this report.

Figure 7: Location of American Indian Tribal Lands

sient non-community water systems located on Indian lands. These 920 PWSs served a population of approximately 500,000. Most of these systems are small and serve fewer than 500 people. According to EPA's data, there were no PWSs on Indian lands in 1996 that served more than 100,000 people, and only two served populations of more than 10,000.

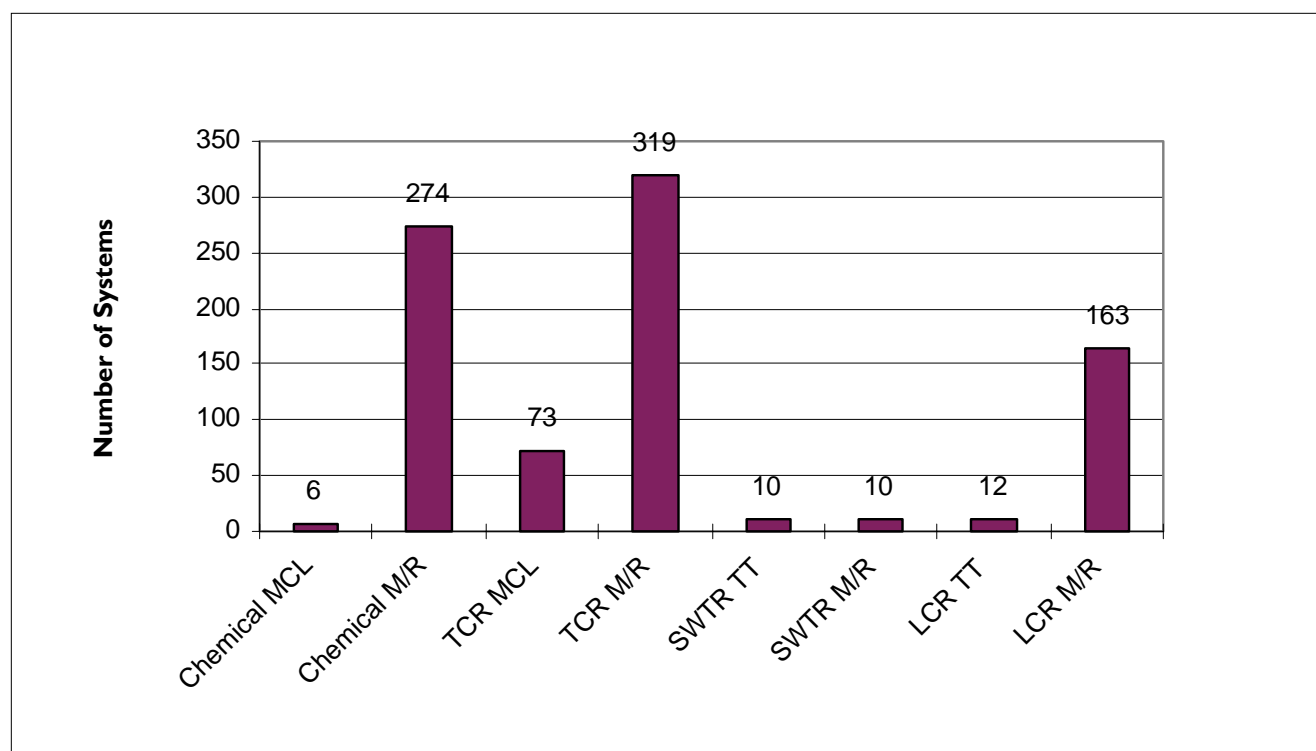
PART III - COMPLIANCE DATA AND ANALYSIS

EPA used a variety of approaches to assess compliance of PWSs located on Indian reservations. The national drinking water database, the Safe Drinking Water Information System (SDWIS/FED), was the primary source of information for this report. The EPA Regional Offices are responsible for keeping information in SDWIS/FED current.

In developing this report, EPA found that inventory and violations data for 1996 were not fully reported in SDWIS/FED. The quality and

amount of these data vary from Regional Office to Regional Office within EPA. Traditionally data quality has been a priority secondary to program implementation for many Regions. Due to competing resources, personnel concentrate on correcting sanitary deficiencies rather than collecting data and arranging for data to be reported on a long-term basis. EPA Headquarters is working to improve its Tribal compliance data, for example, by offering SDWIS/FED training to Regional program office personnel on a more frequent basis, by developing a Quality Assurance manual to help ensure better data entry, and by promoting streamlined documentation.

This section on Tribal compliance does not include compliance figures for Alaska Native Villages because the State of Alaska included them within the State report. EPA likewise included them within Section 2 of this report. However, the discussion on financial assistance and conclusions and recommendations within this section are applicable to Alaska Native water systems.

Figure 8: Number of PWSs on Tribal Lands with Violations by Rule

COMPLIANCE ANALYSIS

For 1996, 410 of the 920 PWSs on Indian reservations recorded violations. More than 97 percent of these violations were significant monitoring and reporting violations. Monitoring requirements for the Total Coliform, chemical monitoring, and the Lead and Copper Rules were most frequently violated (Figure 8). There were few violations of the maximum contaminant level (MCL) and treatment technique requirements, with roughly 90% of all systems reporting no violations. It is important to note, however, that the high number of monitoring and reporting violations could mean other MCL and treatment technique violations were undetected.

ENFORCEMENT AND COMPLIANCE ACTIVITIES

EPA can take formal and informal enforcement actions against PWSs. There are several types of formal enforcement actions which can be taken against PWSs, including: administrative and emergency orders, bilateral compliance agreements, civil referrals to the Department of Justice and criminal cases. In 1996, there were no formal enforcement actions taken against

PWSs on Indian reservations. EPA does not generally pursue formal enforcement actions against PWSs on Indian reservations which have not performed all their required monitoring and reporting. This is consistent with the National EPA Indian Policy which stresses working cooperatively with Tribes. Although there may be situations where formal enforcement is appropriate (e.g., against non-Tribally owned PWSs), in most cases, compliance assistance is generally used, rather than formal enforcement.

Informal enforcement or compliance assistance includes:

- Making telephone calls to discuss potential or actual violations.
- Sending compliance reminder letters or pre-warning violation letters.
- Meetings with Tribal Leaders, utility managers, or PWS operators.
- Conducting on-site visits.
- Issuing notices of violation (while this action is normally a formal enforcement action, EPA has created a subset of notices

Table 4: Number of Violations and Numbers of Informal Enforcement Actions

1996 PWSs and Violations	Number
Total Number of PWSs	920
Total Number of Violations Issued	8,677
Total Number of PWSs with Violations	410
Enforcement Actions in Response to Violations	Number Issued
Federal Notice of Violation issued by EPA Regional Offices. This is usually a formal action, however, some Regions use it as an informal action with Tribes.	3
Federal Violation or Reminder Notice issued by the EPA Regional Offices.	1,558
Federal Public Notification requested by EPA Regional Offices to be sent to consumers of a PWS regarding violations and health risk.	209
Federal public notification to consumers of a PWS regarding violations and health risk issued by EPA Regional Offices.	67

Source: Safe Drinking Water Information System

of violation that function as informal enforcement responses for Indian Tribes).

Table 4 depicts the numbers of informal enforcement actions in relation to the total number of PWSs on Indian reservations. The largest numbers of informal enforcement actions are Federal Violation or Reminder Notices. For calendar year 1996, EPA issued 1,558 Federal Violation or Reminder Notices.

COMPLIANCE ASSISTANCE

EPA has developed a number of approaches for working toward assuring compliance of PWSs on Indian reservations. This subsection discusses compliance assistance using examples since compliance assistance actions are not generally represented in the SDWIS/FED database. Technical assistance is an important part of compliance assistance. Technical assistance can include circuit rider programs that make expert operators available to several water systems and provide information through site visits, mailings and hotlines.

Region 5, for example, oversees Federally recognized Tribes in Michigan, Minnesota, and Wisconsin, and provides technical assistance to Indian Tribes through a circuit rider program. Recently, the Region has conducted six workshops and created four newsletters specific to Tribal interests. Region 5 staff also issued notices of non-compliance (similar to a notice of violation) and provided telephone follow-up.

Region 8 implements the program on Indian reservations in six states: Utah, Colorado, Wyoming, Montana, North Dakota, and South Dakota. Various methods of technical and compliance assistance are offered to Tribes, including circuit riders, and training arranged through EPA, the Indian Health Service, the Bureau of Reclamation, the Rural Water Association, and the Rural Community Assistance Program. In addition, Region 8 staff routinely provide Tribal PWS operators with information on updated monitoring and reporting requirements, such as a yearly monitoring requirement letter customized for PWSs located within each reservation in the Region. Technical assistance is an integral part of the enforcement/compli-

ance assistance process, which follows the Regional and National Indian Policy.

Region 9's program works toward compliance with drinking water regulations through its field presence, technical assistance to Tribes, and cooperative working relationships within EPA, and with other agencies such as the Indian Health Service. The Region, which has the national lead for the program on all Navajo lands, made about 100 on-site inspections of facilities during 1996.

INFRASTRUCTURE NEEDS

The EPA Drinking Water Infrastructure Needs Survey, First Report to Congress (published in January 1997), addresses the needs for capital improvements of PWSs in the nation and for Indian Tribes. The Needs Survey discusses the needs associated with treatment, transmission, distribution, storage, and compliance with the SDWA, and the needs of small PWSs.

The EPA Drinking Water Infrastructure Needs Survey reports the following for Tribal needs:

- \$560 million is needed for infrastructure improvements at water systems on Indian reservations.
- Average 20-year need on a per-household basis for water systems on Indian reservations is much greater than that for non-Tribal households served by small systems. The estimated 20-year per household need, in 1995 dollars, is \$6,200, which compares with \$3,300 per household for other small systems around the country.
- EPA determined that these needs are higher for a number of reasons:
 - Since they are often remote, improvements at systems on Indian reservations can be expensive.
 - Systems on Indian reservations are often located in arid regions, making water sources hard to find. Where sources do exist, they are often of poor quality and are expensive to treat.
 - As with all small communities, American Indian communities lack economies of scale.

- This high cost of infrastructure is a heavy burden because many American Indian people live through traditional subsistence farming, hunting, and fishing and do not generate significant cash income.

ADDITIONAL SMALL SYSTEM NEEDS

Many small PWSs need to enhance their technical, financial, and managerial capabilities in order to ensure consistent compliance with SDWA requirements. Often, noncompliance can be traced back to weaknesses in one or more of these three elements of capacity. Capacity development is especially important and problematic for PWSs on Indian reservations.

Protection of public health and compliance with drinking water requirements is also directly related to operation and maintenance. PWSs on Indian reservations, like many small PWSs, face the challenge of addressing the considerable costs associated with properly operating and maintaining a PWS. Many PWSs on Indian reservations lack a viable utility organization which can accurately project and establish an appropriate rate structure to cover operation and maintenance costs. Once these costs are translated into user fees, the PWS must face the task of billing and collecting fees from customers which is a challenge when the cost per household may be beyond the means of some households being served. Additionally, the costs of compliance monitoring are not always factored into the operating budget. Failure to set aside adequate funds for performing the required contaminant monitoring is likely to result in monitoring violations.

FINANCIAL ASSISTANCE

EPA provides financial assistance to PWSs on Indian reservations in several ways. One approach is to build Tribal capacity. Capacity building entails providing Tribes with grants, training, and program technical assistance as they develop their own environmental programs. A significant source for building capability is through grants provided under the General Assistance Program. Under a second approach, EPA's Office of Ground Water and Drinking Water provides funding for specific program priorities. Historically, 3% of the appropriation for State implementation of the Public Water System Supervision program is used for imple-

mentation of the program on Tribal Lands. The funds are used by EPA to operate its Tribal Public Water System Supervision program. About \$2.3 million was used for implementing the Public Water System Supervision program on Tribal lands in Fiscal Year 1996. Additionally, a number of grants have been awarded to Indian Tribes and Tribal Organizations to address various aspects of the drinking water program.

In Fiscal Year 1998, EPA received \$3.8 million, in addition to the 3% set-aside, to be used for activities such as:

- Public Water System Supervision Program Primacy Workshops - EPA is planning to provide general outreach material to all Tribes eligible to pursue primary enforcement responsibility.
- Capacity Development - EPA is providing funds for Tribal capacity development projects.
- Source Water Protection - EPA is providing funds for Tribal source water protection projects.
- Operator Certification - EPA is developing a voluntary Operator Certification Program for Tribes and will use funds to provide operator training and certification to Tribal operators.

Examples of additional support provided by Regional Offices include circuit rider programs to help Tribes develop self-supportive PWSs on Indian reservations, conducting laboratory analyses of samples required for monitoring, and awarding grants to address operator training and wellhead protection.

In the 1996 Amendments to the SDWA, an infrastructure funding program was established to improve water supplies. Each year, 1.5 percent of the year's appropriation for the national Drinking Water State Revolving Fund program will be set aside as grants to improve infrastructure for water systems on Indian reservations and in Alaska Native Villages. The initial set-aside from the 1997 appropriation amounted to \$19.25 million, and an additional \$10.87 million was set-aside from the 1998 appropriation. The Amendments also authorized grants to the State of Alaska for the benefit of rural and Native villages. Although the autho-

rized \$15 million annual grant, for fiscal years 1997 through 2000, targets construction needs, a portion of the funds can be used to support technical assistance.

Additional technical assistance for small PWSs is also provided under Section 1442(e) of the SDWA, which states that a portion of the funding appropriated under the section shall be used to provide technical assistance to small PWSs owned or operated by Indian Tribes. For example, EPA currently has two cooperative agreements funded under Section 1442(e) of the SDWA with the National Rural Water Association and the Rural Community Assistance Program to provide support to PWSs.

PART IV - CONCLUSIONS AND RECOMMENDATIONS

Approximately 90% of the PWSs located on Indian lands reported no violations of MCL and treatment technique requirements. More than 97% of the violations reported by systems on Indian lands were for failure to meet monitoring and reporting requirements. It is important to note that while MCL and other treatment technique violations were low, the high number of monitoring and reporting violations could indicate that MCL and treatment technique violations are not being detected. In developing this report, EPA found that 1996 violations data for PWSs on Indian reservations were not fully reported by the Regions to SDWIS/FED.

- **EPA should take action to improve compliance of PWSs on Indian reservations.**
 - EPA should work cooperatively with water systems on Indian reservations to improve compliance with monitoring and reporting requirements, particularly for Total Coliform Rule and chemical contaminant requirements. This can be accomplished through compliance assistance such as increasing EPA's field presence, conducting more frequent sanitary surveys, and providing technical assistance and enforcement, as appropriate.
 - EPA should improve its collection and maintenance of compliance data for PWSs on Indian reservations.